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May 29, 1992

Donna R. Searcy, Secretary
Federal Communications Commission
1919 M Street NW
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Secretary Searcy:

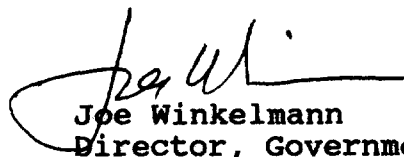
The American Resort Development Association (ARDA) respectfully requests a waiver of the May 26 filing deadline for the enclosed comments in the matter of the Telephone Consumer Protection Act of 1991, CC Docket No. 92-90.

It is my understanding from a conversation with a member of your staff that this waiver may be granted in order for our comments to be considered.

If this is possible, we hope the enclosed comments will assist the Commission in its deliberations.

Thanks, and Best Wishes.

Sincerely,


Joe Winkelmann
Director, Government Affairs

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MAY 29 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of
THE TELEPHONE CONSUMER
PROTECTION ACT OF 1991

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CC Docket No. 92-90

COMMENTS OF THE AMERICAN RESORT DEVELOPMENT ASSOCIATION

The American Resort Development Association represents more than 700 major companies involved with all aspects of site development, construction, sales and management of resort properties, including timeshares, single-family homes, and camp resorts.

Telemarketing is widely and responsibly used to inform consumers of resort property and services. There are also abuses, which ARDA, through our association's Code of Ethics and through the industry's consumer-oriented sales standards, opposes and seeks to eliminate.

As our membership has worked closely with state and local governments and regulatory bodies to eliminate telemarketing abuse, so too we welcome this opportunity to comment on the proposed rulemaking of the Commission.

ARDA supports the overall thrust of the Commission's proposal. We believe the Commission has done an excellent job in defining the most sensitive issues of balance and fairness, and we commend your effort which is fair and reasonable.

We wish to address the following issues on which you request comment, and raise for your consideration areas which have not yet been addressed:

1. With regard to commercial calls that do not transmit an advertisement, several examples are offered which rightfully reflect a desire on the part of the caller to "inform", "alert" and "provide service" related to existing business relationships. We would urge the Commission to specifically include in this category of excepted calls those calls which are for the purpose of informing a member of an association or group, or a subscriber to a service, that the membership of, or service to, the person called is about to expire, or has recently expired. Placing reasonable limits (e.g. calls made up to 90 days following elapsed membership or service) makes sense to protect both the privacy interests of the public and their interests in maintaining a service or membership status that is about to lapse or has recently lapsed.

2. With regard to calls to former or existing clientele, we support the Commission's view that a previous unsolicited contact from the caller to a prospective customer does not engage a business relationship. The Commission may want to consider, however, the question whether the positive response to an unsolicited contact is sufficient to begin a business relationship. For example, if a consumer responds to an offer which made either by mail or by telephone of product or service information or availability, does the acceptance of that offer of information or availability engage the

consumer in a "business relationship" even though a sale has not yet taken place. Keeping in mind your attempt to balance the abuses of telemarketing with its advantages to both business and consumers, we believe it makes sense to define a business relationship as beginning at least at the point that a consumer accepts an offer to communicate with regard to the possible services or products. Likewise, consumers who voluntarily provide (either directly or indirectly through a third party) a telephone number at which a particular vendor may contact them clearly seems to mark the beginning of a business relationship, however brief or long it may turn out to be.

The questions of when a "current" customer becomes a "former" customer, and when a "former" customer becomes so "former" that there is no justification for a claim of a business relationship, are more difficult.

Because the sale and rental of resort property and services is a unique consumer transaction, involving implicit interest on the part of both buyer and seller for continued service and support, warranty and responsibility, consumers do not view the "end of the transaction" as the hour or day on which a property deed is transferred, or a rental is completed. "Current" customers practically include all purchasers of resort property (either fee simple or right-to-use) for the duration of their ownership interest. As an example, if a consumer purchases a timeshare, with deeded interest in perpetuity, the business relationship EXPECTED by that consumer extends in perpetuity. That may not be so if he or she buys a toaster, and the distinction between real property and "consumer products" is one which we feel needs to be addressed with differing

definitions. In the case of purchasers of real property (either fee simple or right- to-use), the definition of a "current" customer must extend at least as long as the interest and use purchased. In a few cases in our industry, that may be as short as 30 years for some right-to-use interests; in almost all cases, however, our current customers have purchased lifetime (and through their heirs perpetual) ownership, rights and interests. These people are our customers throughout their ownership.

At the same time, many of the users of resort property and services do so on a rental basis. Because of the nature of the vacation experience in our society, because of American Family Vacationers' desire for both variety and continuity, and because of the demonstrated habit and desire of resort property vacationers to return to a particular destination every two, three or four years, it would seem reasonable for the length of elapsed time since the last "rental of service" to be long enough to insure that past consumers are reminded and availed of past experiences and prospective opportunities. We urge your adoption of a standard of at least five years in these instances. Consistent with the practical approach taken by the Commission in this rulemaking, it certainly does not seem a violation of privacy to receive a call a year or two following a two-week stay at a particular resort (the basis of the business relationship), to urge that person to return for another vacation.

We also urge that these two definitions be drawn as narrowly as you may deem desirable to exclude the abuse of such standards by other businesses which do not deal in property sales and rentals.

For other services, and for membership in such organizations as the nationwide timeshare exchange groups which serve timeshare owners, property owners associations, and resort/country clubs, we believe such lengthy standards for "current" customers are unnecessary. Membership, for example, in the nationwide timeshare exchanges, is typically one year, although memberships are available for longer periods. Our experience is that once a membership has lapsed more than 60-90 days, the consumer is unlikely to be persuaded to renew, and it is not in either party's interest to engage in intrusive telemarketing.

During the 60-90 day period subsequent to the lapsed membership, however, a high percentage of members renew their memberships, often unaware prior to being contacted that their membership had ended. In order to balance both needs -- for the consumer's right to new new membership and for privacy -- we urge your adoption of a definition of a "current" member/customer to extend through the period of membership and for a period of 90 days thereafter.

3. With regard to use of auto dialers for debt collection, we support the aims expressed in your proposal and commend the Commission for recognizing the legitimate interests of both business and consumers.

4. With regard to facsimile machines, we oppose the unsolicited commercial communication by facsimile machines to either residences or businesses.

5. With regard to options set forth under paragraph F, Telephone Solicitation to Residential Subscribers, we want to restate our views on the issue of "prior express invitation or permission": the Commission should adopt a rule that an invitation or permission is given at the time a person KNOWINGLY volunteers their telephone number to a business, either directly or indirectly through a third party, or when a person responds positively to an unsolicited call.

It does not seem a burden on consumers to receive ONE unsolicited call. The nature of successful marketing, from the consumer's standpoint, often depends on new product and service information. Intrusion and harrassment do not begin with the first call...they occur when a consumer has said "Do not call again" and that request is not respected, or when the prospective customer is called at odd hours.

For this reason, we urge the Commission to adopt a three-part rule:

a. No violation may be deemed to occur on the first unsolicited call.

b. Companies must maintain a cost-effective "Do Not Call" system containing the name and number of any person who requests it. In response to your request for comments specifically concerning differing standards for small business and local marketing, we believe a simple and effective rule of thumb should be that any in-company system should be required to extend only as far as the prefixes and area codes of the calling lists used. If a company calls into every area code and prefix in all 50 states, so be it. That is their chosen market. If a small company targets its

marketing to a single area code and four prefixes, that company's responsibilities would seem to end with the people within that four-prefix calling area who have asked the company not to call them.

c. Telemarketing calls of any nature should be limited to a standard 9 a.m. - 9 p.m. calling period. This is simply good manners and good business.

6. Although not addressed by the Commission, one additional issue is important to mention, namely the supervisory monitoring of telemarketing callers. We would urge the Commission to specifically include in your final rule the principle that supervisory monitoring which has as its objective the maintenance of quality control and elimination of possible caller abuse is encouraged and permitted. Our experience is widely shared among our members, and reflects the consistent need -- particularly for training of new callers -- for supervision. Likewise, as a tool for uncovering a pattern of caller neglect, misinformation and abuse, supervisory monitoring is critical. We understand that Congress may well address this issue at another time, but we believe the Commission may rightly address this issue in its current rulemaking on the basis that the overall legislative objectives and history mandate rules which protect the customer through implementation of sound telemarketing practices. Supervisory monitoring is a key to obtaining Congress' objective. Two aspects of this matter need to be balanced, we feel:

a. Caller-employees or agents need to be made aware in advance that their calls will be randomly screened for quality control and customer protection.

b. Call monitoring by the employer cannot be effective in achieving quality control and consumer protection if it is predictably announced...it must be random.

Again, we wish to express our overall support for your proposal and hope that our comments may be helpful in your final deliberations.

Respectfully submitted,

A handwritten signature in cursive script, reading "Thomas C. Franks", is written over a horizontal line.

Thomas C. Franks
President
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